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Letter Ruling 81-1: State Non-Contributory Pension Paid to a Surviving Spouse; Withholding

January 5, 1981

You request a ruling on whether the ***** Retirement Board must withhold Massachusetts income taxes from retirement benefits paid to the surviving spouse of a former city employee who retired under General Laws Chapter 32, Section 58. The Board withholds federal taxes from this pension.

Certain veterans who complete thirty years of service with the Commonwealth of Massachusetts, or certain subdivisions thereof, are entitled to a non-contributory pension under General Laws Chapter 32, Section 58. Under Section 58B, those qualifying for Section 58 pensions may elect to receive a smaller annual amount in consideration for the continuance of two-thirds of this reduced pension after the pensioner's death for the benefit of a surviving spouse or beneficiary.

General Laws Chapter 62, Section 2 defines Massachusetts gross income as federal gross income with some modifications. Section 2(a)(2)(E) excludes certain contributory government pensions from gross income. In general, non-contributory government pensions are subject to Massachusetts income tax.

Income, which is taxable under Massachusetts General Laws Chapter 62, is subject to Massachusetts withholding under General Laws Chapter 62B, Section 2 to the extent that it is subject to federal withholding either under Internal Revenue Code Section 3401 or as the result of a voluntary agreement to withhold federal taxes under Code Section 3402(o).

Based on the foregoing, it is ruled that a non-contributory government pension received by the widow of a former city employee is subject to withholding in Massachusetts if it is subject to either mandatory or voluntary federal withholding.

Very truly yours,

/s/L. Joyce Hampers

L. Joyce Hampers
Commissioner of Revenue

LJH:DMH:mf

LR 81-1

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